UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,781	11/20/2003	Christopher J. Burt	203995-1 (5024-00289)	1536

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EXAMINER
LUBIN, VALERIE

ART UNIT	PAPER NUMBER
3626	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/718,781	BURT ET AL.
	Examiner	Art Unit	
	VALERIE LUBIN	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _28 October 2010_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-39_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-39_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR

1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn

pursuant to 37 CFR 1.114. Applicant's submission filed on 10/28/10 has been entered.

2.   Claims 1-39 are pending.

        For reference purposes, the document paper number is 20101102.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art
> are such that the subject matter as a whole would have been obvious at the time the invention was made to a
> person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be
> negatived by the manner in which the invention was made.

4.   Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Boukobza et al., U.S. Patent No. 6,122,664 in view of Engleson et al, U.S. Pre-Grant Pub No.

2003/0009244.

5.   With respect to claim 1, Boukobza recites a method comprising the steps of

configuring a memory device in each of customer information systems of an information

system, the memory including a set of executable code (Col. 4 lines 59-66); executing the set

of executable code with a processor configured in each of the customer information systems

(Col. 6 line 16); polling a set of data from the information system with a single proactive agent

(Col. 5 lines 5-7, col. 21 lines 48-50); transforming the set of data into a plurality of counters

(Col. 4 lines 36-39); monitoring one or more performance parameters of the information

system by recording the values of the parameters by one of the plurality of counters (Col. 3

lines 30-35); comparing the values of the counters to thresholds (Col. 2 line 50).

Boukobza does not specifically recites notifying a designated representative of the

value of one of the plurality of counters exceeding one of the thresholds; however, he does

recite notifying a designated representative of some event (Col. 2 lines 50-52; col. 6 lines 22-

26). It would have been obvious to one of ordinary skill in the art to notify a representative of

out-of-range values with the motivation of taking corrective measures.

Boukobza does not recite a healthcare information system which comprises a plurality

of customer information systems; however Engleson does (¶ 37). I would have been obvious

to one of ordinary skill in the art to add the features of Engleson to Boukobza with the

motivation of ensuring that hospital systems are working properly.

Claims 15, 18, 34, 38 and 39 are rejected under the analysis of claim 1.

6.   Concerning claim 2, Boukobza discloses taking measurements at predetermined

intervals (Column 6, lines 64-66).

7.   For claims 3-5, the type of parameters being measured is non-functional descriptive material that does not further limit the process steps found in claim 1, i.e. monitoring, comparing and notifying (In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II). Therefore, claims 3-5 are rejected under the analysis of claim 1.

8.   Claims 6-10 are rendered obvious, as Boukobza recites notifying a management system (Column 18, lines 58-67) and notifying an administrator of the monitored application (Column 32, lines 17-20). A predictable result of Boukobza would therefore be to notify any necessary device, system or person in order to have the application or system repaired (KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)).

        Claims 26-30 are rejected under the analysis of claims 6-10.

9.   Claims 11 and 12 are also rejected, as Boukobza recites a user defining thresholds (Column 9, line 67; column 10, lines 1-4, 23-26).

        Claims 31 and 32 are rejected under the analysis of claims 11 and 12.

10.   With respect to claim 13, Boukobza discloses receiving an acknowledgement of receipt of the notification, an instruction of an action to be performed, and performing the action (Column 17, lines 62-67; column 18, lines 4-7).

11.   Claim 14 is an optional limitation which is not required to be performed, and therefore does not further limit the process of claim 13. Claim 14 is therefore rejected under the analysis of claim 13.

12.   Claim 16 is rendered obvious over Boukobza who recites determining a numerical value for performance parameters (Column 15, lines 10-12; column 27, lines 64-65).

Claim 35 is rejected under the analysis of claim 16.

13.   Regarding claim 17, Boukobza discloses displaying a user interface to show parameter curves, conditions, actions and later analysis (Column 3, lines 60-67; column 4, lines 1-4). Therefore, claim 17 is rendered obvious over the prior art.

Claim 36 is rejected under the analysis of claim 17.

Claim 37 is also rejected under the analysis of claim 17, as it recites a duplicated component and it has been held that mere duplication of parts has no patentable significance unless a new and unexpected result is produced (In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960)).

14.   With regards to claim 19, Boukobza discloses an operator capable of taking action (Abstract; column 2, lines 46-52).

Claims 20 and 21 are rejected under the analysis of claim 19.

15.   For claim 22, Boukobza discloses taking measurements at predetermined intervals (Column 6, lines 64-66).

16.   For claims 23-25, the type of parameters being measured is non-functional descriptive

material that does not further limit the system found in claim 18 (In re Gulack, 217 USPQ 401

(Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031

(Fed. Cir. 1994); MPEP 2106.01 II). Therefore, claims 23-25 are rejected under the analysis

of claim 18.

17.   Claim 33 is an optional limitation which is not required to be performed, and therefore

does not further limit claim 18. Claim 33 is therefore rejected under the analysis of claim 18

(See MPEP 2106.II.C).

Response to Arguments

18.   Applicant's arguments filed 10/28/2010 have been fully considered but they are not

persuasive.

19.   Applicant argues that Boukobza does not teach the transforming, monitoring, nor

comparing steps as claimed in the present application. However, Examiner disagrees. In

col. 4 lines 36-39, Boukobza recites nodes which Examiner based on Applicant's disclosure

and the reference interprets to be counters and hence reads over the step of transforming the

set of data into a plurality of counters. In col. 3 lines 30-35, Boukobza describes how those

nodes through the use of agents measure parameters which reads over Applicant's step of

monitoring one or more performance parameters of the information system by recording the

values of the parameters by one of the plurality of counters. In col. 2 line 50, Boukobza

recites testing conditions on the measured parameters of the nodes relative to thresholds which reads over Applicant's step of comparing the values of the counters to thresholds.

20.   Applicant argues that Engleson "includes a healthcare information system that encompasses and communicates with a plurality of hospital information systems. However, nowhere in Engleson is it taught that a healthcare information system comprises a plurality of customer information systems." Examiner notes that Applicant has not shown how the claimed plurality of customer information systems differs from the information systems of paragraph 37 of Engleson. The pharmacy computer 60, a nursing station 70, and bedside CPUs 80 of Engleson are all customer information systems within an integrated hospital-wide information and care management system 30. Examiner also notes that in Boukobza, the management node is monitoring a plurality of machines which can be interpreted as customer systems.

21.   Applicant argues that "the single proactive notification agent of the present application is structurally and functionally different from those agents found in the Boukobza reference." Examiner respectfully disagrees and refers Applicant to col. 4 of Boukobza where the management node is described as containing "a generic agent which processes the conditions in several nodes..." (lines 19-21). The management node of Boukobza is further explained to monitor a plurality of machines (lines 36-39) and the monitoring process is controlled by the management node (Col. 5 lines 9-10). Hence, because the management node controls all the other nodes, it is necessarily involved in the communication with the machines to be monitored. In other words, the nodes N are assigned to each module as

Applicant pointed out, but are also part of the management module MN with the generic

agent which controls the monitoring of all modules or machines.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to VALERIE LUBIN whose telephone number is (571)270-5295.

The examiner can normally be reached on Monday-Friday 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert Morgan can be reached on 571-272-6773. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status information for

unpublished applications is available through Private PAIR only. For more information about

the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to

the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197

(toll-free). If you would like assistance from a USPTO Customer Service Representative or

access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or

571-272-1000.

/VALERIE LUBIN/
Examiner, Art Unit 3626